IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4437 of 2007

Anjum Fatima Aslam .. Petitioner

versus

State of Maharashtra & ors. .. Respondents

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Mr.G.S. Godbole i/b D.B. Sawant for the petitioner.

Mr.N.P. Malvankar AGP for respondent nos.1 and 2.

Mr.A.S. Bhor for respondent no.3.

Mr.A.V. Latne for respondent no.4.

Ms.S.S. Singh for respondent no.5.

CORAM : S.B. MHASE AND

D.G.KARNIK, JJ

DATED : 11th July 2007.

ORAL JUDGEMENT :- (Per S.B.Mhase, J)

. Rule, returnable forthwith.

2. The petitioner has approached this Court invoking its jurisdiction under Article 226 of the Constitution of India inter alia challenging the order dated 30th May 2007 passed by respondent no.2 - Divisional Scrutiny Committee for Verification of Caste, Konkan Division. As a result of the said order of the respondent no.2, the social status claim of the petitioner as a Momin Caste (OBC) has been invalidated by the respondent no.3 Committee.

3. The petitioner is an elected corporator of the respondent no.3 in a reserved ward for OBC. The respondent nos.4 and 5 are defeated candidates from the said ward and they have challenged the social status of the petitioner. It appears that twice the Vigilance Cell report has been prepared, one is in favour of the petitioner and the other is against the petitioner. The moment an adverse report was prepared by the Vigilance Cell and a copy served on the petitioner, he submitted two applications both dated 30th May 2007 to issue a witness summonses. However, without deciding those applications, the impugned order has been passed.

4. Learned counsel for the petitioner submits that on this issue alone, the order can be struck down and the matter can be remanded back to the Scrutiny Committee. Learned counsel for respondent nos.4 and 5 opposed vehemently such a course. It is contended that the said applications were submitted by the petitioner after the enquiry was closed by the Scrutiny Committee and therefore, the Scrutiny Committee has not rightly considered those applications.

5. We are not in agreement with the learned counsel for the respondent. The Maharashtra Scheduled Castes, Scheduled Tribes Denotified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act (23 of 2001) provides that the burden of proof of the social status is on the person who makes an application. The said burden is therefore on the petitioner as per section 8 of the said Act. In order to enable the petitioner to discharge the said burden, the respondent no.2 Scrutiny Committee is vested in the powers, as stated in section 9 of the Act, of summoning and enforcing the attendance of any

person and examining him on oath. Therefore, the moment such application was given by the petitioner, the Scrutiny Committee ought to have exercised the powers under section 9 and ought to have issued the witness summonses unless the witnesses were irrelevant. The Scrutiny Committee has lost sight of the fact that the said applications were given prior to the decision of the Scrutiny Committee and therefore, the Scrutiny Committee was under an obligation to issue summonses and examine the witnesses unless the witnesses were found to be irrelevant. However, for that exercise also, the parties will have to be heard and applications will have to be considered on its own merits. Unfortunately, the Scrutiny Committee has kept these applications on record without passing any orders and therefore the impugned order suffers from serious illegality, namely denial of an opportunity to lead evidence so as to discharge the burden as has been placed on the petitioner under the provisions of section 8 of the said Act. On this limited issue without going into other issues involved in the matter, we find that the impugned order is bad and illegal and we therefore quash and set aside the said order.

5. In the circumstances, we remand the matter to the respondent no.2 Scrutiny Committee. The Scrutiny Committee shall decide the said applications after hearing the petitioner and if the Scrutiny Committee finds that the witnesses called for are relevant for discharge of the burden cast on the petitioner it shall summon those witnesses and thereafter decide the matter on its own merits.

6. Rule is made absolute accordingly.

(D.G. KARNIK, J) (S.B. MHASE, J)